

(b) *Eligible facilities.* Essential community facilities must be:

(1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Necessary for orderly community development and consistent with the State Strategic Plan.

(c) *Credit elsewhere.* The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

(d) *Economic feasibility.* All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in 7 CFR 1942.17(h) and 1942.116. The amount of CFG assistance must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) *Legal authority and responsibility.* Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) *Facilities for public use.* All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

**§ 3570.62 Use of grant funds.**

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with 7 CFR parts 1942, subparts A and C, and 3575, subpart A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

- (i) Fire, rescue, and public safety;
- (ii) Health services;
- (iii) Community, social, or cultural services;
- (iv) Transportation facilities such as streets, roads, and bridges;
- (v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;
- (vi) Telecommunications equipment as it relates to medical and educational telecommunications links;
- (vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;
- (viii) Natural gas distribution systems; and

(ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) “Otherwise improve” includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to the Agency and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic’s, material, or other liens that may attach to the security property.

The Agency may authorize payment of such obligations at the time of grant closing. The Agency’s authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant’s request and the Agency’s authorization for paying such obligations shall be in writing.

#### **§ 3570.63 Grant limitations.**

(a) Grant funds may not be used to:

(1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);

(2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinance existing indebtedness;

(4) Pay interest;

(5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b)(1).

(6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));

(7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;